

ORIGINAL
FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

ORIGINAL

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In the Matter of:

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations
(Goldendale, Washington)

RM- 7949

JUN - 4 1992

Federal Communications Commission
Office of the Secretary

TO: Chief, Policy and Rules Division

COMMENTS ON
NOTICE OF PROPOSED RULE MAKING

Nugent Broadcasting Company ("Nugent"), the licensee of Stations KACI(AM/FM), The Dalles, Oregon and Mid-Columbia Broadcasting, Inc. ("Mid-Columbia"), the licensee of Station KMCQ(FM), The Dalles, Oregon (collectively, "Respondents"), through their counsel respectfully submit their Comments in the Notice of Proposed Rulemaking, issued April 13, 1992 in the above-captioned proceeding. The Notice was issued in response to a request for rulemaking filed by Colin B. Malcolm ("Petitioner" or "Malcolm") seeking to substitute Channel 273-C3 for Channel 272A at Goldendale, Washington.^{1/}

^{1/} Malcolm is the permittee of Station KYYT(FM), a Class A(FM) facility authorized to Goldendale, Washington. The FCC files indicate that Station KYYT has been operating since January, 1992. Malcolm is also the principal owner of Station KCLK(AM), a 1 Kw full-time operation on 1400 Kc and also licensed to Goldendale, Washington.

No. of Copies rec'd 24
List A B C D E

I. Preliminary Statement

Nugent is the licensee of Station KACI in KACI(FM) licensed to The Dalles, Oregon. Mid-Columbia is the licensee of Station KMCQ(FM) also licensed to The Dalles, Oregon. In addition, Station KODL (1440 kHz, 5 Kw-D 1 Kw-N), is also licensed to The Dalles.

The communities of The Dalles and Goldendale are separated by approximately 24 miles and the respective signals of the Respondents and Petitioner necessarily overlap. Thus, the stations compete for both audience and advertising revenues. Accordingly, Nugent and Mid-Columbia have standing to participate in this proceeding.

II. Argument

Nugent and Mid-Columbia respectfully submit that the proposed upgrade of Channel 272-A to Channel 272-C3 fails to meet the Commission's technical requirements and the allocation standards set forth in Section 307(b) of the Communications Act. Specifically, Petitioner fails to demonstrate compliance with Section 73.315 of the Commission's Rules (the city grade coverage requirement); fails to meet the requirements of Section 1.1307 of the Commission's rules; raises a serious question as to the availability and suitability of his proposed transmitter site; and fails to conform with the requirements of Section 1.402(b) of the Commission's rules concerning rulemaking proceedings and the

need to conform proposals to the requirements to the subscription and verification requirements of Section 1.52 of the Commission's rules.

III. The Proposed Upgrade Will Not Provide
Principal City Coverage to Goldendale

Malcolm's upgrade proposes a frequency upgrade, using Channel 272C3 at a restricted transmitter site located 18.8 kilometers south of Goldendale.^{2/} In the engineering statement, attached to his request, petitioner noted that he had "selected a preferred transmitter site "located on Haystack Butte and specified the site coordinates as:

North Latitude:	45°	40"	15'
West Longitude:	120°	54"	30'

An examination of the specified site demonstrates that petitioner's proposal will not provide the requisite city grade coverage to Goldendale from that site. Attached hereto is an engineering statement plotting the exact location of the coordinates on a U.S.G.S 7.5 minute quad topographic map. As shown in Attachment A to the Engineering Statement, Petitioner's proposed site is situated at an elevation of 1440 feet on the south side of Haystack Butte. The site lies over 1500 feet below the crest of the butte (2969 feet) and approximately 1.4

^{2/} However, in the Commission's Notice, refers to a site located 17.8 kilometers south of Goldendale. The exact distance of the restriction is not clear because the petitioner's specifies a site 18.8 kilometers south of that community.

kilometers lateral distance from the top of the butte. By selecting this site, Petitioner has effectively created an insurmountable terrain barrier between his proposed site and the community of Goldendale. The attached terrain profile shows that the intervening terrain some 450 meters above Petitioner's site (see Attachment C).

The proposed site contravenes Section 73.315(b) of the Commission's Rules, which provides in pertinent part that:

"location of the antenna should be so chosen that line of sight can be obtained from the antenna over the principal city or cities to be served. In no event should there be a major obstruction in this path."

In those instances where it has been shown that line of sight coverage cannot be achieved from a proposed site, or the site will not otherwise allow a transmission path free of major obstructions, the Petitioner must demonstrate via an engineering showing that the received signal strength as transmitted from that site will exceed 70 dBu and encompass the entire principal community, Table of Allocations FM Broadcast Stations (Creswell, Oregon, 65 RR 2d 56 (1989)). Accordingly, Malcolm's petition should be dismissed for failing to demonstrate its ability to provide the requisite city grade coverage.

IV. Proposed Site Raises Environmental Questions

Not only does petitioner's proposal raise terrain shielding questions and city grade coverage questions, it also

raises a serious question as to site availability. Attached hereto are two maps, Exhibits 1 and 2, which demonstrate that the site selected by the petitioner is located within the Columbia River Gorge Scenic Area.^{3/} Thus, the proposed construction of a new radio transmission facility within this protected area will have significant environmental impact, a situation which requires the petitioner to submit an environmental assessment under Section 1.1307 of the Commission's Rules. The environmental consequences of a propose site location within a designated national scenic area clearly constitutes a major environmental action within the meaning of the Rules and thus requires Petitioner to submit an environmental statement demonstrating compliance with those Rules, Celcom Communications Corporation of Georgia, 52 RR 2d 1674 (Common Carrier Bureau, 1983).^{4/}

In order to approve the upgrade allotment as requested, the Petitioner must demonstrate that a suitable site exists. Such suitability is generally determined by whether the site will comply with all of the Commission's engineering requirements and will provide principal city grade service to Goldendale. Whereas here it appears the site will not allow line-of-sight coverage

^{3/} The Columbia River Gorge National Scenic Area was established by Congress on November 17, 1986 pursuant to Public Law 99-663. See U.S.C. 544.

^{4/} Petitioner's site also raises a question as to good engineering practice inasmuch as it is to be located approximately 200 feet north of a major power line (see Attachment B).

over Goldendale or a transmission path of major obstruction, the Petitioner must demonstrate via an engineering showing that the signal strength as transmitted from the site will exceed 70 dBu and encompass the entire community of Goldendale. This the Petitioner has not done. Instead, Petitioner has apparently relied on the assumption that uniform terrain data under the standard predicted method of coverage applies. However, now that Respondents have shown that serious technical flaws exist in the Goldendale upgrade proposal, the burden shifts to Petitioner to submit full terrain data for eight radials from its "preferred site" demonstrating the requisite degree of coverage as well as a showing that Petitioner has reasonable assurance of the site availability of the proposal, Ruarch Associates, 66 RR 2d 713 (1988). In addition, the Petitioner must address and respond fully to the related environmental and technical questions raised by its selection of a transmitter site within a well known federally protected scenic area.

V. Petitioner's Proposal is Inconsistent with
Section 307(b) of the Communications Act.

The Respondents respectfully submit that the Petitioner's proposal to upgrade its FM facility in Goldendale ignored the statutory mandate of Section 307(b) of the Communications Act. Per that provision, the Commission has a basic obligation under the Communications Act to provide a "fair,

efficient and equitable" distribution of radio service to the various states and communities within them. This standard obligates the Commission to engage in rational and deliberate consideration of each of these elements. Thus, the Commission must consider whether the proposal represents a "fair" distribution of the spectrum; whether the proposal is an "efficient" distribution of the spectrum; and whether the proposal is an "equitable" distribution of the spectrum.

While the Commission has reshuffled its allocation priorities during the past ten years, Petitioner's proposal still must be evaluated in light in each of the component parts of the 307(b) standard. Yet toward this end, the Petitioner has submitted no supporting evidence that the proposal meets these objectives other than the naked and unverified claim that the proposal, if granted, would provide wide area service.

This bald claim is unacceptable as it provides no rational nexus or response to any of the demands of the "fair, efficient or equitable" distribution standard. Asserting "wide-area" service without data to show that there are recipients for the service or that the signal would reach underserved area is an insufficient demonstration of spectrum efficiency.

Nor is the proposed upgrade a fair or equitable distribution of radio services among the two communities involved: The Dalles, Oregon and Goldendale, Washington. While the relevant population have disclosed a number of new radio

stations in the two markets has doubled from three to six, including the two stations owned by Petitioner in Goldendale. Goldendale is a community of some 33,019 persons. Goldendale is the county seat of Klickitat County and serves as the commercial hub for this rural, agricultural area. Klickitat County has a population of approximately 16,600 persons. While it experienced an increase in population, some 15,800 since 1980, zero population growth is predicted at least through 1995.^{5/} During the past decade, both The Dalles and Goldendale suffered population growths over the last decade. Goldendale's population declined from 3,414 persons to 3,319 (-2.8%). These reverse directions of population decline and radio growth bring into question Petitioner's purported intent to "provide Goldendale with its first wide coverage area FM service." Rather, the objective of Petitioner is to effectively relocate his Goldendale station to a point where it can more effectively compete for the small and diminishing listener base and advertising revenues in The Dalles.

Is this fair? No it is not! In the last eight years, the FCC has granted Petitioner a full-time AM station and more recently a new Class A FM facility to serve the listening public of Goldendale, Washington. Petitioner has only been operating

^{5/} See 1992 Commercial Atlas and Marketing Guide, Rand McNally, (123rd Edition).

his FM station since January 1992 and now seeks to relocate beyond a point where he can provide city grade service to Goldendale in order to operate in the adjoining state of Oregon.

Is it efficient? Absolutely not! Station KYYT(FM) was licensed to serve Goldendale and to provide service to some 13,098 citizens.^{6/} Petitioner now proposes to relocate this operation to a site on the Oregon/Washington border without any showing as to continued service to his present service area; a showing made critically necessary by the "shadowing" problem which would result from his proposed site.

The Dalles is already served by four radio stations which struggle to survive in a small agricultural and rural economy. By what measure of Darwinian allocation standards can the introduction of a fifth radio service to this community of 11,000 person be rationalized? Petitioner has offered no showing on this salient question.

VI. Petitioner Has Submitted
An Unverified Pleading

Although Petitioner's request indicates that the original copy of its proposal was signed, he failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of his knowledge. Section 1.52 of the

^{6/} See application of petitioner for construction permit, dated November 15, 1990 claiming 1 mV/m coverage to 13,098 persons.

Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party. In the absence of such verification, the petition should be dismissed.^{7/}

Respectfully submitted,

NUGENT BROADCASTING COMPANY
MID-COLUMBIA BROADCASTING


J. Dominic Monahan

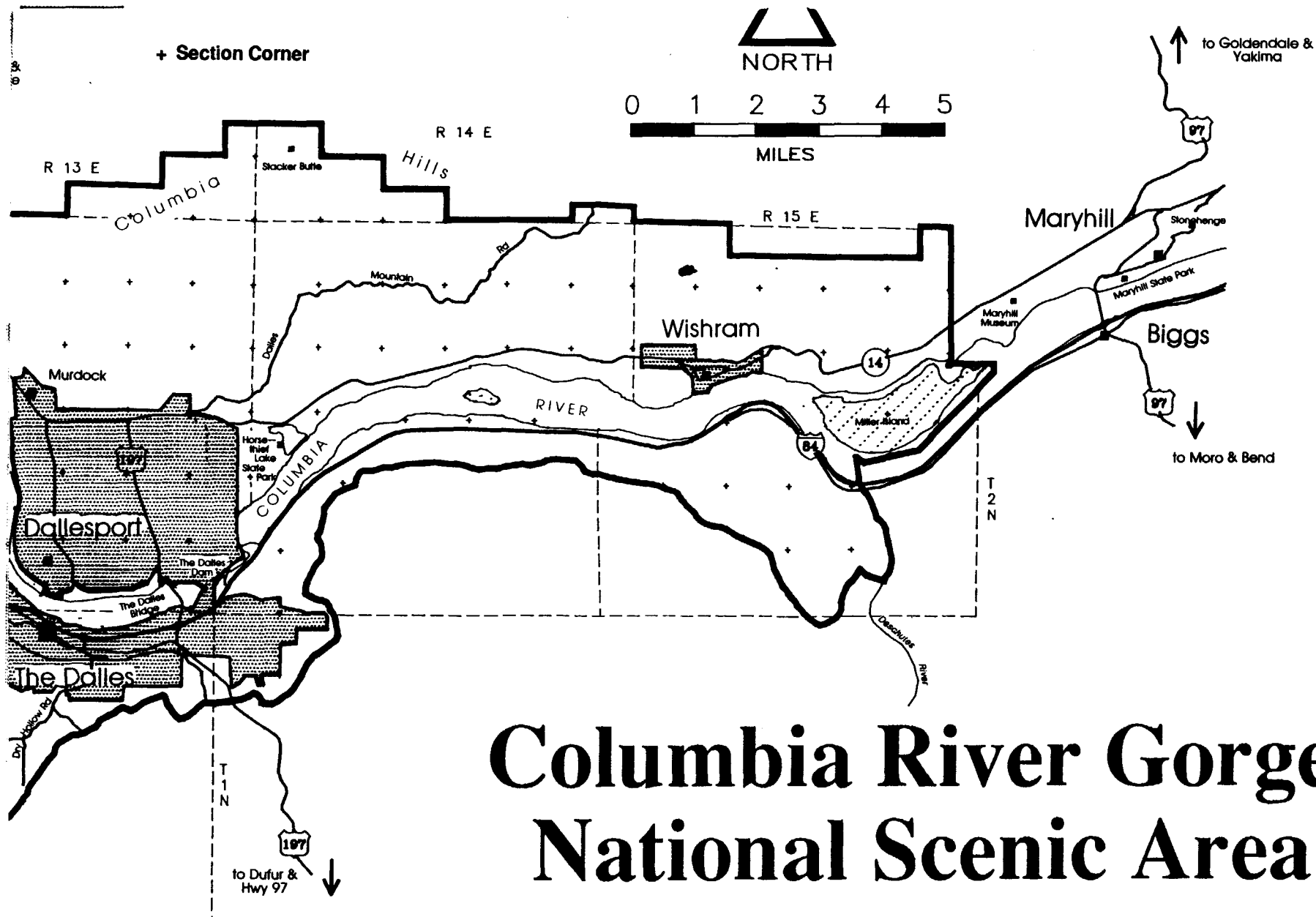
Their Counsel

Dow, Lohnes & Albertson
1255-23rd Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2730

Dated: June 4, 1992

^{7/} Section 1.402(b) of the Rules concerning rule making proceedings places petitioners on notice that their proposals must conform with the requirements of Section 1.52 regarding the subscription and verification.

EXHIBIT 1

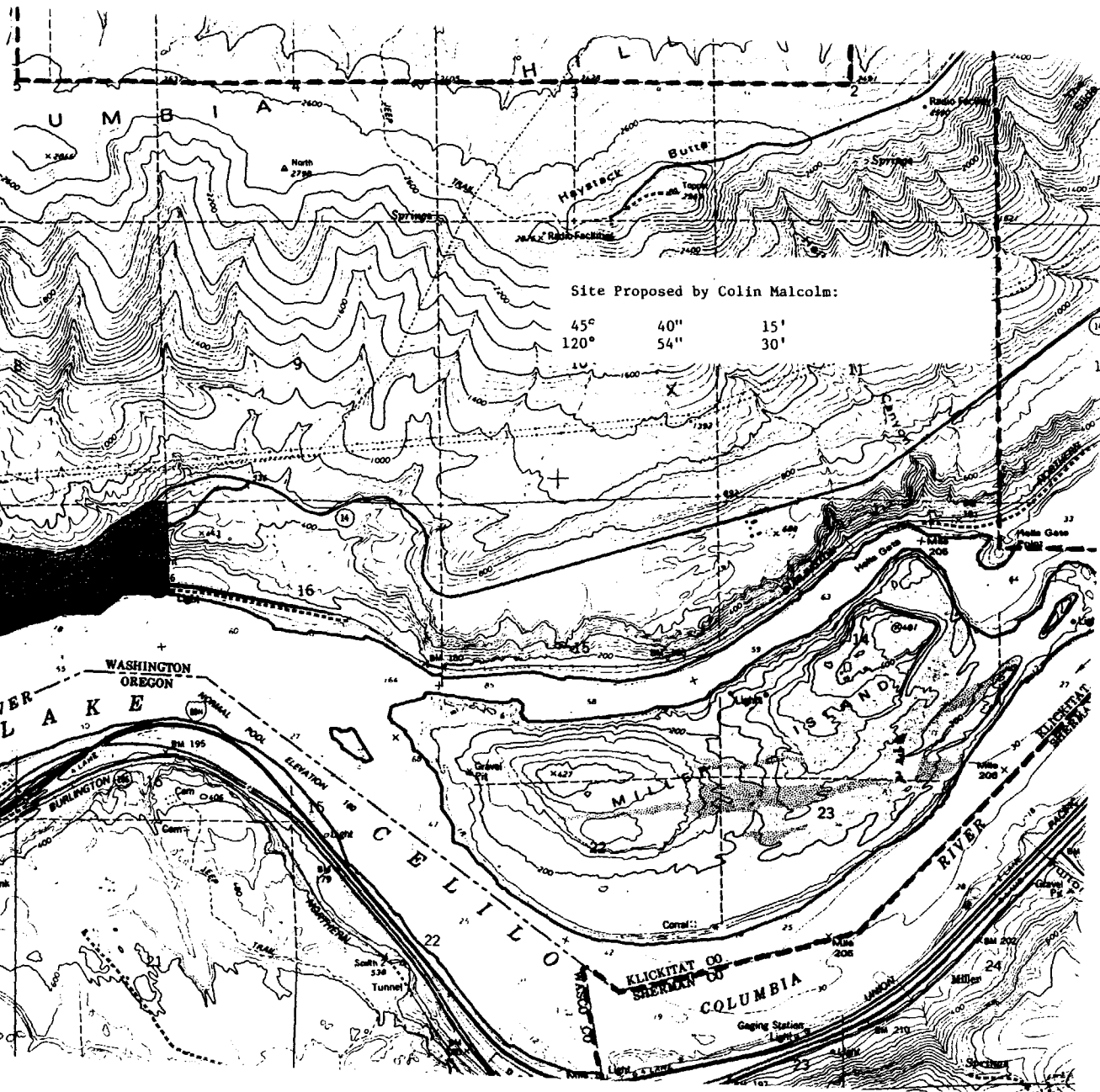


Columbia River Gorge National Scenic Area

EXHIBIT 2

178 W
(STAGGER BY 1E)

Heavy Black Dotted Border indicates boundary of the
Columbia River Gorge National Scenic Area



BOYD BROADCAST TECHNICAL SERVICES

21818 S.W. Columbia Circle
Tualatin, OR 97062
(503) 692-6074

ENGINEERING STATEMENT IN SUPPORT OF COMMENTS

This statement has been prepared on behalf of Station KMCQ(FM), The Dalles, Oregon, in support of its Comments on the Notice of Proposed Rulemaking issued in MM Docket No. 92-68 proposing to allocate Channel 272C-3 in Goldendale, Washington, in substitution for Channel 272-A. This requested rulemaking was filed by Colin B. Malcolm, the permittee of Station KYTT(FM), Goldendale, Washington, which presently holds a permit for an FM operation on Channel 272-A in Goldendale.

The petitioner requests that Channel 272C-3 be allocated to Goldendale specifying a site restriction with the following coordinates:

North Latitude: 45 Degrees, 40 Minutes, 15 Seconds

West Longitude: 120 Degrees, 54 Minutes, 30 Seconds

In the engineering statement attached to petitioner's original rulemaking request, petitioner describes the above-referenced coordinates as a "preferred transmitter site located on Haystack Butte in Columbia Hill, 18.8 kilometers south of Goldendale." Using a U.S.G.S. 7.5 minute quad topographic map, I have plotted the coordinates listed in the reference documents (see Attachment A). As noted on the attachment, petitioner's coordinates plot a site located approximately 1.18 kilometers south of the Haystack Butte site. As also shown in

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The petitioner requests that Channel 272C-3 be allocated to Goldendale specifying a site restriction with the following coordinates:

North Latitude: 45 Degrees, 40 Minutes, 15 Seconds

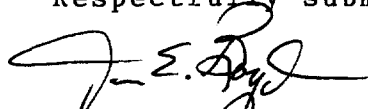
West Longitude: 120 Degrees, 54 Minutes, 30 Seconds

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Attachment A, the elevation of the proposed site as determined by the coordinates, is actually some 450 meters lower than the height of the Haystack Butte site which is also noted on the attached map. Attachment B shows the topographical relationship between the proposed site and the principal city of Goldendale, Washington.

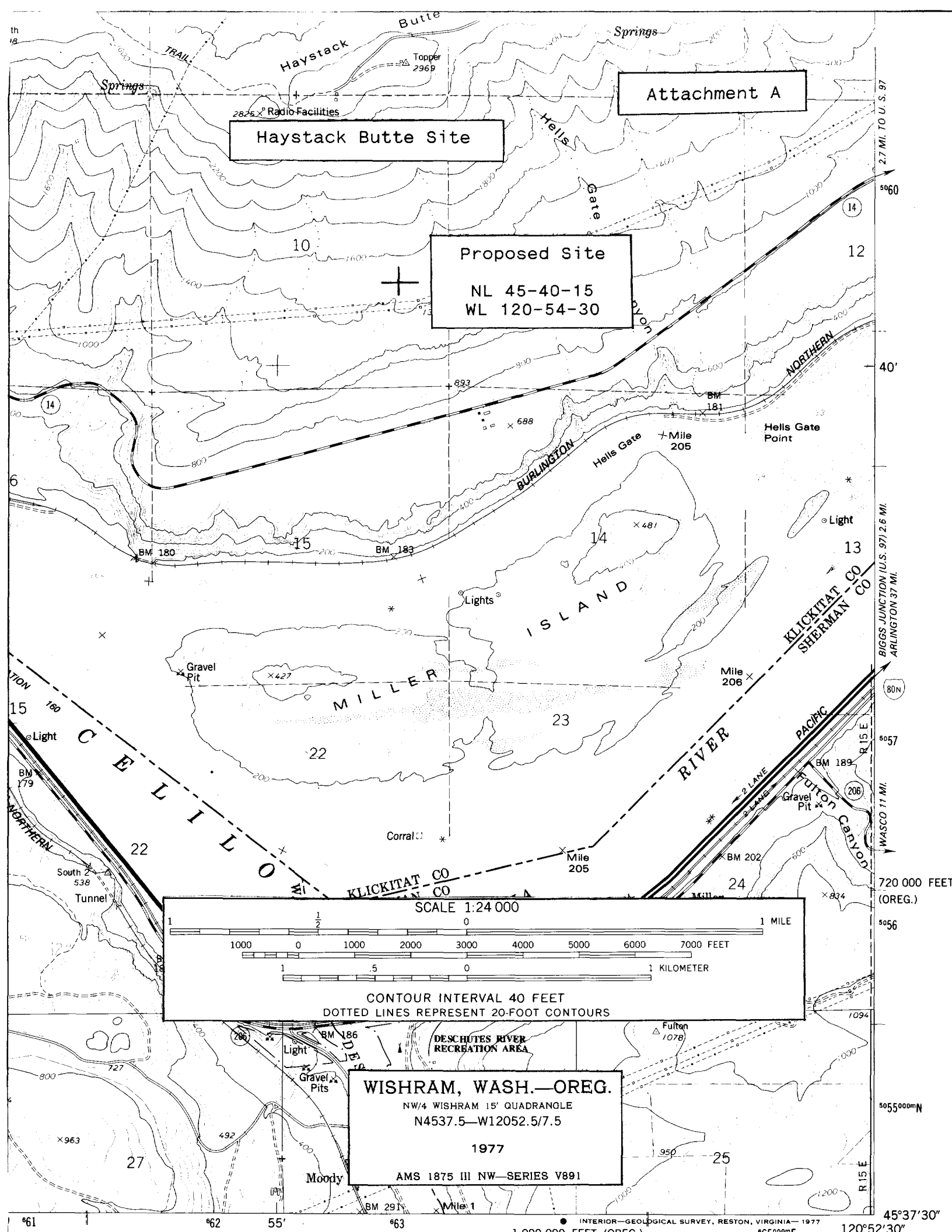
A terrain profile study was done on a radial which connects the proposed site with Goldendale. Contour and distance information was obtained from the Wishram, Wash.-Oreg., Biggs, Wash.-Oreg. and Goldendale, Wash., 7.5 minute quad topographic U.S.G.S. maps. A graphical representation of this terrain profile is shown in Attachment C. This study discloses that the use of the proposed site would not provide the requisite line of sight to Goldendale, Washington, required by Section 73.315(b) of the Commission's Rules. It is apparent that the intervening terrain between the proposed site and Goldendale will result in severe terrain shielding and greatly impaired coverage to the principal community.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "J. E. Boyd", is written over the typed name.

James E. Boyd
Broadcast Consultant

Dated: May 27, 1992



Attachment A

Haystack Butte Site

Proposed Site

NL 45-40-15
WL 120-54-30

WISHRAM, WASH.-OREG.

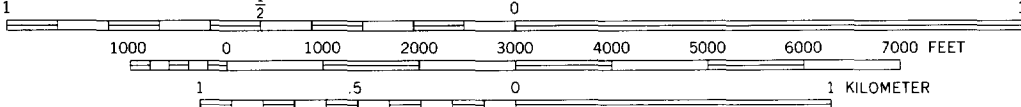
NW/4 WISHRAM 15' QUADRANGLE
N4537.5-W12052.5/7.5

1977

AMS 1875 III NW-SERIES V891

CONTOUR INTERVAL 40 FEET
DOTTED LINES REPRESENT 20-FOOT CONTOURS

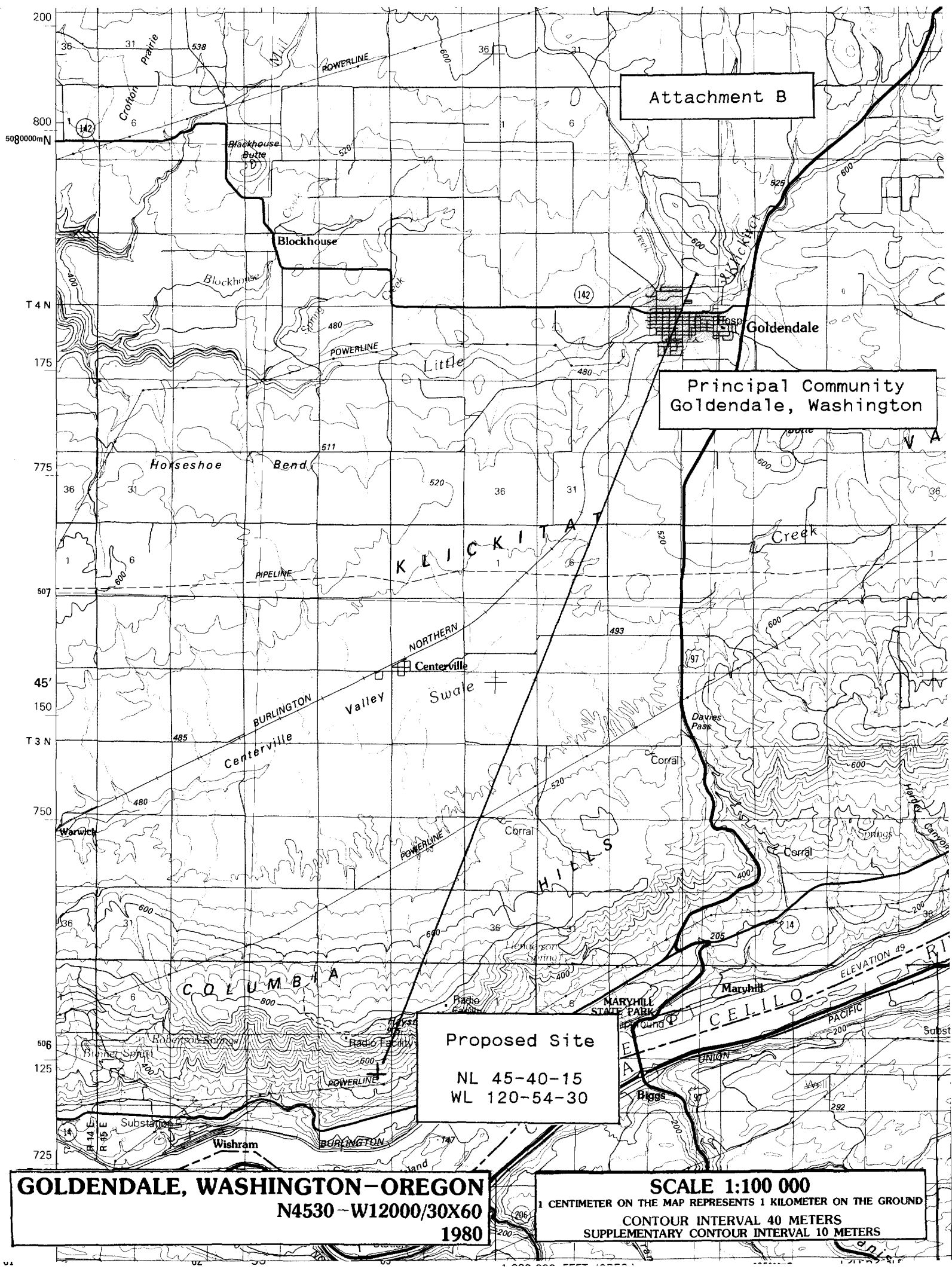
SCALE 1:24 000

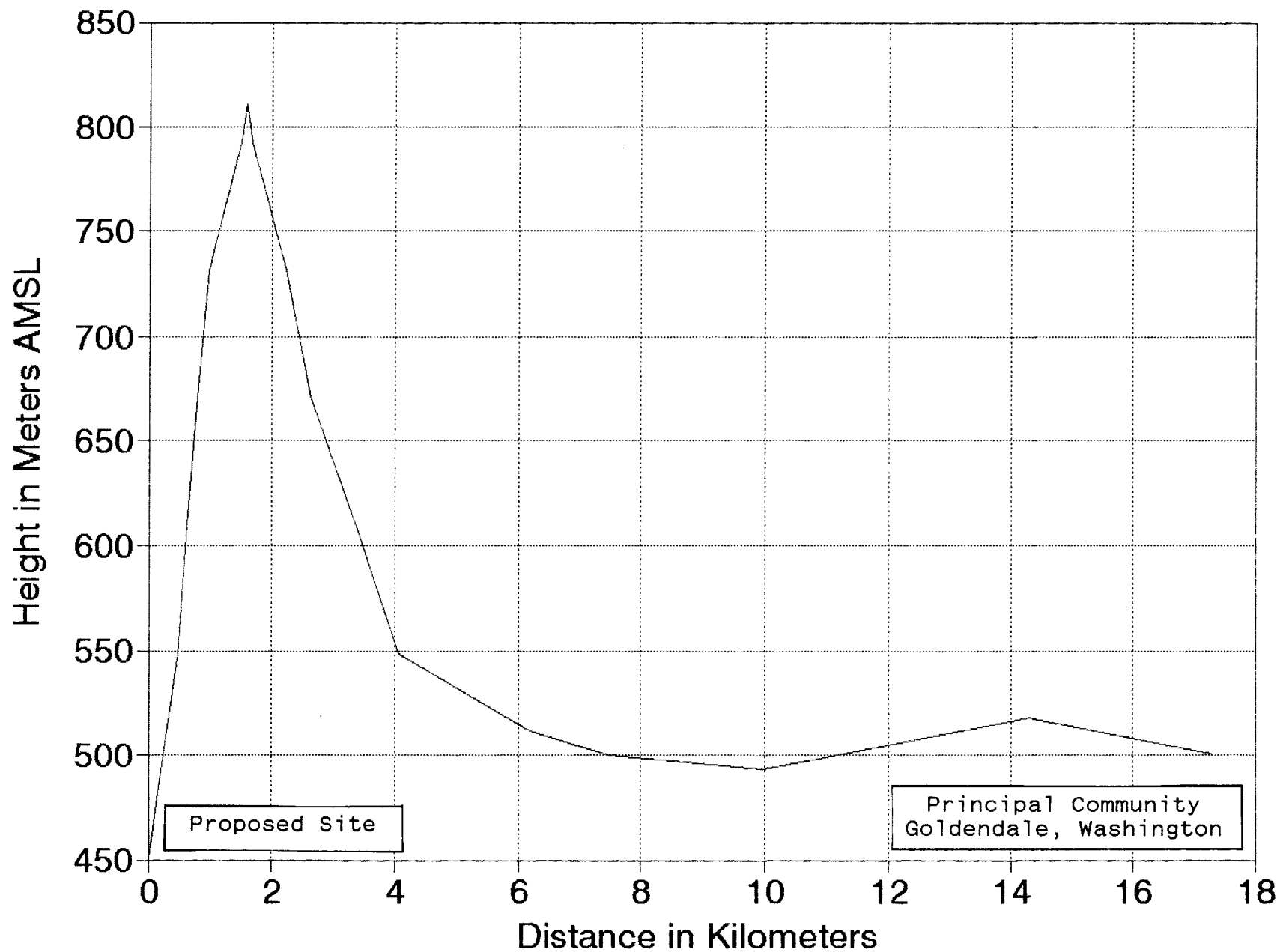


DESCHUTES RIVER RECREATION AREA

2.7 MI. TO U. S. 97
40'
2.6 MI.
BIGGS JUNCTION (U.S. 97) 2.6 MI.
ARLINGTON 37 MI.
80N
5057
720 000 FEET (OREG.)
5056
1094
5055
N

61 62 55' 63 1 200 000 FEET (OREG.) 45°37'30" 120°52'30"

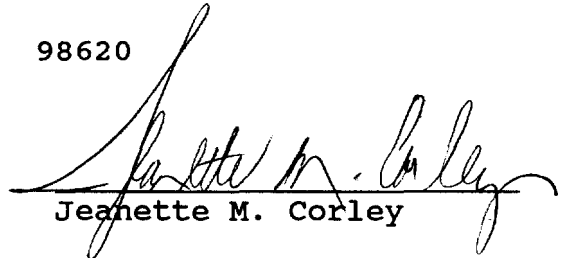




CERTIFICATE OF SERVICE

I, Jeanette M Corley, a secretary in the law firm of Dow, Lohnes & Albertson, do hereby certify that on the 4th day of June, 1992, copies of the foregoing "Comments on Notice of Proposed Rule Making" was sent to the following person by U.S. mail, first-class postage prepaid:

Colin B. Malcolm
P.O. Box 149
Goldendale, Washington 98620



Jeanette M. Corley